IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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WRIT PETITION NO : 21390 of 2004

Between:

M/s. Aashrith Hotels, rep.by G.Praveen Rao,
Managing Partner,
Plot No.237/a, Road No.36, Jubilee Hills,
Hyderabad-500033.

..... PETITIONER

AND

1. The Commissioner of Prohibition & Excise, Andhra Pradesh,

Hyderabad.
2. The Municipal Corporation of Hyderabad,

Represented by the Commissione, Hyderabad.
3. The Assistant Medical officer of Health, Circle No.V, West

Zone, MCH, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to grant a writ, direction or order, one more in the nature of a writ of Mandamus or any other appropriate writ, directing the Commissioner of Prohibition & Excise, Hyderabad, the 1st respondent herein, to consider the petitioner's representation

dtd.23-10-2004 for grant of a Bar License to its running restaurant under the name and style of "36 Jubilee Hills", pending issuance of a NOC by the MCH authorities, on the line of his earlier orders in proceedings 5418/2003/CPE/G.1 dtd.9th April 2003, and consequentially direct the Commissioner of MCH, Hyderabad and the Assistant Medical officer of Health, Circle No.V, West Zone, MCH, Hyderabad, respondents No.2 and 3 herein to consider without any further delay the petitioner's application dtd.16th Aug 2004 for issuance of a No objection Certificate for setting up of a Bar in its running restaurant premises.

Counsel for the Petitioner: MR.V.PATTABHI

Counsel for the Respondent No.1: GP FOR PROHIBITION & EXCISE

Counsel for the Respondent Nos.2 and 3: Smt G.Jyothi Kiran (SC for Municipal Corporation of Hyderabad)

The Court, at the stage of admission, made the following:

ORDER:

The petitioner firm had established a restaurant in plot No.237/A, Road No.36, Jubilee Hills. It also intended to establish a bar in the same premises, and

accordingly, submitted an application to the 1st respondent, for grant of licence-IL 17 on 12.08.2004. Since a 'No Objection Certificate' (for short 'NOC') from the Municipal Corporation, Hyderabad, 2nd respondent, is necessary, the petitioner claims to have submitted the application for grant of 'NOC' on 16.08.2004. The petitioner complains that though more than three months have elapsed, 2nd respondent has not taken any steps, and on account of non-issuance of 'NOC', the entire establishment made by the petitioner is going waste and it is subjected to huge losses. It seeks appropriate directions from this Court.

Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise, and learned Standing Counsel for the Municipal Corporation of Hyderabad.

The petitioner intended to establish a Bar at the place, referred to above, and he made an application as required under the A.P.Indian Liquor and Foreign Liquor Rules 1970 (for short 'the Rules'), to the 1st respondent. Rule 29 (3) (a) of the said Rules mandates that the licence in Form No.IL-17 or IL-19, shall not be granted, unless 'NOC' from the local authority concerned is produced. It was for compliance with this provision that the petitioner submitted an application to the 2nd respondent, way back on 16.08.2004. 2nd respondent is required to consider the same and pass appropriate orders without much delay.

Learned counsel for the petitioner has placed before this Court the order, dated 09.04.2003, passed by the 1st respondent, which is to the effect that, in case, the Executive Officer of the Contonment Board does not pass any orders as to the issuance of 'NOC' within seven days, it shall be deemed that they have no objection for grant of licence in IL-17. He seeks a direction to the 1st respondent to adopt the same course of action.

This Court is not at all convinced as to the legality of such a course of action. It is for the legislature to enact deeming provisions and not for the Executive or the Courts to incorporate such clauses.

Having regard to the facts and circumstances of the case, the writ petition is disposed of directing that the application, dated 16.08.2004, submitted to the 2nd respondent for grant of 'NOC' shall be considered and disposed of within two weeks

from the date of receipt of a copy of this order. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

Date: 23rd November, 2004

Note: Furnish copy in two days.

(B/o.)

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To

1. The Commissioner of Prohibition & Excise, Andhra Pradesh,

Hyderabad.
2. The Commissioner, Municipal Corporation of Hyderabad,

Hyderabad

3. The Assistant Medical officer of Health, Circle No.V, West

Zone, MCH, Hyderabad.

4. 2CCs to the Government Pleader for Prohibition and Excise, High

Court Buildings, High Court of A.P.Hyderabad.(O.U.T).

5. 2 CD copies.